

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RAYSEAN BARBER, and GUY
COLLINS,

Plaintiffs,

vs.

SCOTT FRAKES, TAGGART BOYD,
TED HILL, MIKI HOLLISTER,
KRISTINA MILBURN, NATE
SHWAB, DR. MARK LUKIN, DR.
MEGAN FORD, BETTY GERGEN,
JACQUE GOODING, AMY REZNEY,
and ROBIN CHURCH,

Defendants.

8:18CV410

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff Rayshean Barber’s (“Barber”) Motion for Leave to Proceed in Forma Pauperis (“IFP”). ([Filing No. 2](#).) The court has received a copy of Barber’s trust account information. ([Filing No. 3](#).) Barber is permitted to proceed IFP.

Prisoner plaintiffs are required to pay the full amount of the court’s \$350.00 filing fee by making monthly payments to the court, even if the prisoner is proceeding IFP. [28 U.S.C. § 1915\(b\)](#). The Prison Litigation Reform Act “makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal.” *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997); *Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951 (D. Neb. 2001).

Pursuant to [28 U.S.C. § 1915\(b\)\(1\)](#), Barber must pay an initial partial filing fee in the amount of 20 percent of the greater of Barber’s average monthly account balance or average monthly deposits for the six months preceding the filing of the

Complaint. Here, the court finds the initial partial filing fee is \$69.01, based on an average monthly account balance of \$345.07. Barber must pay this initial partial filing fee within 30 days or his case will be dismissed. Barber may request an extension of time if one is needed.

In addition to the initial partial filing fee, Barber must “make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account.” [28 U.S.C. § 1915\(b\)\(2\)](#). The statute places the burden on the prisoner’s institution to collect the additional monthly payments and forward them to the court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall forward payments from the prisoner’s account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

[28 U.S.C. § 1915\(b\)\(2\)](#). Therefore, after payment in full of the initial partial filing fee, Barber’s institution must collect the remaining installments of the filing fee and forward the payments to the court.

Barber is advised he will remain responsible for the entire filing fee, as long as he is a prisoner, even if the case is dismissed at some later time. *See In re Tyler*, [110 F.3d at 529–30](#); *Jackson*, [173 F. Supp. 2d at 951](#).

IT IS THEREFORE ORDERED that:

1. Plaintiff Barber’s Motion for Leave to Proceed IFP ([filing no. 2](#)) is granted.
2. Plaintiff Barber must pay an initial partial filing fee of \$69.01 within 30 days, unless the court extends the time in which he has to pay in response to a

written motion. If the initial partial filing fee is not received by the specified deadline, this case **will be dismissed**.

3. After payment of the initial partial filing fee, Plaintiff Barber's institution must collect the additional monthly payments in the manner set forth in [28 U.S.C. § 1915\(b\)\(2\)](#), quoted above, and forward those payments to the court.

4. The clerk's office is directed to send a copy of this order to the appropriate official at Plaintiff Barber's institution.

5. The clerk's office is directed to set a pro se case management deadline in this case using the following text: **October 1, 2018**: initial partial filing fee payment due.

6. Plaintiff Barber shall keep the court informed of his current address at all times, and all parties are bound by the Federal Rules of Civil Procedure and by the court's Local Rules while this case is pending.

Dated this 30th day of August, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge